

JOHN E. SMITH—MEMORIAL OF.

DECEMBER 18, 1834.—Referred to the Committee on Foreign Affairs.

DECEMBER 23, 1834.—Referred to the Secretary of State.

*To the honorable the Senate and House of Representatives of the United States in Congress assembled :*

The memorial of John E. Smith, of the city of Baltimore,  
RESPECTFULLY SHOWETH :

That your memorialist was, in the year 1805, the lawful owner of one-half the American ship Portsmouth, belonging to the port of Baltimore. That said ship sailed from Baltimore, bound on a lawful voyage to Amsterdam, on which voyage she was arrested by a British cruiser, and sent into England, where nothing appearing to implicate her neutral character or conduct, she was speedily released.

While lying in England, the said vessel was chartered to Mr. Thomas Wilson, a merchant of London, on a voyage to Montevideo, in South America, with liberty to touch at the coast of Africa. She sailed on this voyage from Portsmouth, with such cargo as Mr. Wilson thought proper to ship on board of her, and Mr. Alexander Cumming as her supercargo, and arrived in safety at Sierra Leone, an English port on the coast of Africa, where she was taken possession of in a hostile manner by an English sloop of war, under the command of Captain K. Maxwell.

After about a month's detention at Sierra Leone, the ship was sent by Captain Maxwell to Goree, another English port, where she was detained two months longer, a large portion of her crew impressed, and her store of provisions carried off. Circumstances rendered it desirable that Captain Maxwell should communicate with his Government, and he determined upon sending the Portsmouth to carry his despatches to England. She arrived in England, where proceedings were instituted against her as lawful prize, and a decree of acquittal was formally pronounced, and the captors mulcted in damages for their illegal conduct. From this sentence there was no appeal, and your memorialist refers to it as conclusive proof, not only that there was no just cause of condemnation, but that there existed no rational ground of suspicion upon which to arrest her. It was indeed extraordinary that a ship belonging to a friendly Power, sailing immediately from one English port, under charter to an English merchant, and sailing in his employ, furnished with all the documents necessary to show her voyage legal, should, upon her arrival in another English port, be seized as prize.

Subsequent information has confirmed the original suspicion that the capture, detention, and sending the ship to England for adjudication, were all mere pretences; and that the real object to be accomplished was the transmission of intelligence to England.

Your memorialist has, at various times since the perpetration of this wrong upon his property, endeavored to procure compensation from the British Government, and has availed himself of the kind offices of the functionaries of the United States to aid him in obtaining justice. The claim has been resisted, upon grounds which your memorialist is advised and believes to be utterly untenable. The British Government has urged that this claim is a stale one, whereas your memorialist is prepared to prove that it never has been allowed to sleep when circumstances rendered it proper for him to urge it. A claim does not become obnoxious to this epithet, merely because it is a long time since the injury was inflicted. It has been repeatedly brought before the British Government, and their omission to make compensation for the wrong they have committed can never impair the justice of the demand.

The other reason assigned by Lord Palmerston is, if possible, still more objectionable, and involves a question of deep interest to the American Government and American citizens. It is urged that inasmuch as the British prize court which acquitted the *Portsmouth*, and decreed her to be delivered up, had entire jurisdiction over the whole subject-matter, and actually decreed some compensation in damages, such decree is absolutely obligatory, and final and conclusive upon all the points in the case.

Your memorialist might freely admit that had the controversy been simply between British subjects, such might be the law, but he protests, and calls upon this Government to protest, against its application to an American claimant. An American merchant, whose property has been illegally seized by a public vessel of another Government, is not bound by any principles of law or reason to resort to legal tribunals for redress, or to submit his case to the jurisdiction of an interested court. The wrong itself gives him a right to resort to the Government at once for redress, and to invoke the aid of his own Government to sustain his demand for justice. In a large proportion of these cases, for which foreign nations have, by treaty stipulations, provided a compensation for illegal seizures, the principles contended for by Lord Palmerston would have been a full answer, had it been founded on the law of nations.

This case is distinguished from most others, the wrong or seizure being done while the ship was lying in an English port, where she was, by the law of nations, under the immediate protection of that Government; and nothing can release that Government from its responsibility for all losses and damages arising from, or in consequence of the wrong act, but proving the seizure legal. This has never been controverted, either by any writer upon the law of nations, or in any diplomatic discussion.

Your memorialist submits that his case possesses every characteristic which can recommend it to the favorable consideration of your honorable bodies, and he indulges the hope that the Government of the United States, the constitutional guardian and protector of its citizens and their rights, will cause such representations of the matter to be made to Great Britain, as will secure to your memorialist a full though tardy measure of justice.

JOHN E. SMITH.